

VILLAGE OF LOMBARD  
REQUEST FOR BOARD OF TRUSTEES ACTION  
For Inclusion on Board Agenda

  X   Resolution or Ordinance (Blue)   X   *Waiver of First Requested*  
       Recommendations of Boards, Commissions & Committees (Green)  
       Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Tim Sexton, Acting Village Manager

DATE: September 25, 2013 (B of T) DATE: October 3, 2013

TITLE: AN ORDINANCE AUTHORIZING THE ACQUISITION OF  
THE PROPERTY COMMONLY KNOWN AS 1134 SOUTH  
FAIRVIEW AVENUE, AND ACCEPTING A TEMPORARY  
CONSTRUCTION LICENSE AGREEMENT IN RELATION TO THE  
PROPERTY IMMEDIATELY SOUTH THEREOF, PURSUANT TO  
THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT

SUBMITTED BY: Carl Goldsmith, Director of Public Works *mg*

BACKGROUND/POLICY IMPLICATIONS:

As part of the Village's ongoing efforts to address sanitary and stormwater issues, staff has developed a project to reconstruct the Fairview Lift Station. In order to accommodate the construction, the Village needs to acquire an additional ten (10') feet of property from the Park District and obtain a five (5') foot temporary construction easement. This project has been included in the Village of Lombard Capital Improvement Plan for construction in 2015.

FISCAL IMPACT/FUNDING SOURCE

\$25,000                      520.790.715

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X \_\_\_\_\_ Date \_\_\_\_\_

NOTE: Materials must be submitted to / approved by the Village Manager's Office by 12:00 pm, Wednesday, prior to the Agenda Distribution.



September 23, 2013

TO: Village President and Board of Trustees

THROUGH: Timothy Sexton, Acting Village Manager

FROM: Carl Goldsmith, Director of Public Works *CJ*

SUBJECT: Fairview Lift Station Improvements

### **BACKGROUND**

Following the July 2010 storm event, the Village embarked on an aggressive plan to upgrade the Village's critical pumping infrastructure to enhance our ability to effectively operate during storm conditions. To that end, the last several years of the Village's CIP have contained significant dollars to upgrade facilities. In some cases the upgrade was an onsite generator, while other projects included the full replacement of facilities (i.e. Route 53 Storm Station).

The Fairview Lift station serves the Old Grove area in District #6. This is the final station anticipated to be renovated or improved as part of the plan established by the Public Works Department and funded by the Village. The station is located on the west side of Fairview Avenue approximately 125 feet south of Cherry Lane. The station is bordered by Fairview Avenue on the east, a private residence to the north, and Park District property to the south and west

The original intent of the Fairview Lift Station improvement included the installation of an on-site generator to supply back-up power to the station. The Village retained Baxter & Woodman to perform an evaluation of the station to determine whether additional repairs/improvements should be considered for the Fairview Lift Station. Baxter & Woodman completed their partial evaluation of the pump station, which evaluated permanent back-up power, control cabinetry, pump hydraulics and easements. Baxter & Woodman concluded the following improvements should be made to the station:

- Generator - The facility needs a permanent back-up power source to allow uninterrupted sanitary sewer service during storm events and power outages. The recommended improvements include a new generator to be located on the existing property.
- Control Cabinet – The electrical cabinet was inspected and needs to be replaced and raised to avoid the high-water level of the site.
- Pump Hydraulics – The existing pumps, motors and bases all need to be replaced. The detailed analysis of pump hydraulics is attached. In summary, the existing

pumps are operating outside of preferred range, which causes excessive vibration, frequent pump starts/stops, and pump base failures.

- Property and Easements - The pumping station is located on a lot that is 37 feet by 100 feet (0.085 acres). There is room on site to replace all the required components, but constructability and access are two major concerns. A permanent easement from the Park District will be required to properly rehabilitate or replace the facility.

Since receiving the preliminary report, the Village has been discussing the property and easement issues with the Lombard Park District. The District has indicated its willingness to sell the Village property that will facilitate the construction of the new station. The agreement provides that the Village would acquire a parcel, immediately south of the existing station that measures 10" by 145.74". The documents have been developed to provide for a fee simple acquisition of ten (10) feet, as well as a five (5) foot temporary construction easement. The cost of the purchase and temporary easement has been negotiated and set at twenty-five thousand (\$25,000) dollars. The CIP does contain funding to cover the cost of the property acquisition. The construction of the Fairview Lift Station Improvements is scheduled for 2015.

The Village staff looked at various preliminary designs for the new station with the hopes of avoiding the need to acquire additional property for the improvements. In every scenario, the costs for alternate designs would be problematic from an operational perspective and in many cases, was more costly than anticipated costs for the station with the acquisition costs.

The Ordinance has been prepared so that the transaction is covered by the Local Government Property Transfer Act (50 ILCS 605/0.01 et seq.). In this regard, the Lombard Park District will need to approve the transaction, after the Ordinance is approved by the Village Board, by a resolution passed by a two-thirds (2/3rds) vote of the members of the Board of Commissioners of the Lombard Park District, with a certified copy thereof being recorded with the DuPage County Recorder's Office. The Park District Commissioners have reviewed this item and approved the first reading of this item. The final agreement has been prepared by the Village Attorney and the Park District's counsel.

Staff has included a copy of the Ordinance and the Grant of Easement relative to the Fairview Lift Station. Should you have any questions, please feel free to contact me.

### **RECOMMENDATION**

Staff recommends that the Village President and Board of Trustees adopt AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY COMMONLY KNOWN AS 1134 SOUTH FAIRVIEW AVENUE, AND ACCEPTING A TEMPORARY CONSTRUCTION LICENSE AGREEMENT IN RELATION TO THE PROPERTY IMMEDIATELY SOUTH THEREOF, PURSUANT TO THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF  
THE PROPERTY COMMONLY KNOWN AS 1134 SOUTH FAIRVIEW AVENUE,  
AND ACCEPTING A TEMPORARY CONSTRUCTION LICENSE AGREEMENT  
IN RELATION TO THE PROPERTY IMMEDIATELY SOUTH THEREOF,  
PURSUANT TO THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT  
(50 ILCS 605/0.01 et seq.)**

**WHEREAS**, the President and Board of Trustees of the Village of Lombard deem it necessary for the health, welfare and safety of the residents of the Village of Lombard to purchase real estate to enable the Village to use, occupy and improve said real estate with the installation of a sanitary sewer lift station, and all facilities incidental thereto, at the location set forth below; and

**WHEREAS**, the President and Board of Trustees of the Village of Lombard desire to purchase the property commonly known as 1134 South Fairview Avenue, Lombard, Illinois, DuPage County, to accomplish the aforesaid purpose; said property being legally described as follows:

THE NORTH 10 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

(hereinafter the "Real Estate"); and

**WHEREAS**, the Village has, after extensive inquiries and negotiations, agreed to purchase the Real Estate for a purchase price of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), plus title insurance and survey costs; and

**WHEREAS**, in order to develop the real estate with the sanitary sewer lift station, and all facilities incidental thereto, it is necessary to acquire a temporary construction license over the following legally-described property, being a five (5) foot wide strip of land located immediately South of the Real Estate:

THE SOUTH 5 FEET OF THE NORTH 15 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois;

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

**SECTION 1:** That the Real Estate Purchase and Sales Contract, attached hereto as **Exhibit 1**, and incorporated herein by reference, is hereby approved, and the Village President and Village Clerk are hereby authorized and directed to execute same on behalf of the Village. The Village President and Village Clerk are hereby further authorized and directed to execute all appropriate documents and take such other action as is required of them to consummate the purchase by the Village of the Real Estate, in accordance with the terms of the Real Estate Purchase and Sales Contract.

**SECTION 2:** That the Temporary Construction License Agreement, attached hereto as **Exhibit 2** and incorporated herein by reference, is hereby accepted, and the Village President and Village Clerk are hereby authorized and directed to execute same on behalf of the Village.

**SECTION 3:** This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

First reading waived by action of the Board of Trustees this \_\_\_\_ day of \_\_\_\_\_, 2013.

Passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Keith Giagnorio, Village President

**ATTEST:**

\_\_\_\_\_  
Sharon Kuderna, Village Clerk

Published by me in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_,  
2013.

\_\_\_\_\_  
Sharon Kuderna, Village Clerk

**Exhibit 1**

**REAL ESTATE PURCHASE AND SALES CONTRACT**

(see attached)

**Exhibit 2**

**TEMPORARY CONSTRUCTION LICENSE AGREEMENT**

(see attached)



**REAL ESTATE PURCHASE AND SALES CONTRACT  
PURSUANT TO THE LOCAL GOVERNMENT  
PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)**

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "Contract") is made as of the Effective Date (as defined in Paragraph 24 hereof) between the LOMBARD PARK DISTRICT, an Illinois park district (the "Seller") and the VILLAGE OF LOMBARD, an Illinois municipal corporation (the "Buyer"), pursuant to the provisions of the Local Government Property Transfer Act (50 ILCS 605/0.01 et seq.). (The Seller and the Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties.")

**AGREEMENT:**

1. THE SELLER AND THE BUYER ARE UNITS OF LOCAL GOVERNMENT, AND THIS CONTRACT IS SUBJECT TO THE APPROVAL OF, AND IS NOT ENFORCEABLE UNLESS APPROVED AT AN OPEN MEETING BY, THE BOARD OF TRUSTEES OF THE BUYER AND THE BOARD OF COMMISSIONERS OF THE SELLER.

2. **SALE.** The Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to a parcel of land commonly known as 1134 South Fairview Avenue, Lombard, Illinois, with PIN: Pt. 06-17-412-013, located in the County of DuPage (the "Property"), which Property is legally described in Exhibit A attached hereto and made a part hereof.

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00)** (the "Purchase Price"). At closing, Buyer shall pay to Seller, in good and available funds by wire transfer or cashier's check, the Purchase Price, plus or minus prorations as provided herein.

4. **EARNEST MONEY DEPOSIT.** None required. All money will be paid at closing.

5. **CLOSING DATE.** The closing (the "Closing") of the contemplated purchase and sale of the Property shall take place through a deed and money escrow ("Escrow") on October 31, 2013 (the "Closing Date") at the office of Chicago Title Insurance Company, 171 North Clark Street, Third Floor, Chicago, Illinois (the "Title Company") or at such other time and place as mutually agreed to by the Parties. The cost of the Closing fee shall be paid for by Buyer.

6. **ENVIRONMENTAL INSPECTION.** The Buyer shall have the right, any time prior to the Closing, to select and retain environmental and other consultants to examine and inspect the physical condition of the Property (including the groundwater thereunder), to conduct a site assessment and environmental audit, and to perform any environmental and engineering investigation or testing it deems necessary and appropriate (the "Environmental Assessment"). Seller hereby grants, and will cause any tenants to grant, to the Buyer and its consultants, their employees, agents, subcontractors and representatives, authorization to enter upon the Property to conduct the environmental and engineering

investigation. Seller shall provide to the Buyer and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder).

7. **BUYER'S OPTION TO TERMINATE CONTRACT.** The Buyer shall not be obligated to take title to the Property if, in the Buyer's sole and exclusive judgment, for any reason whatsoever, Buyer determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a material health, safety or environmental hazard, or if the Environmental Assessment reveals the existence of any environmental condition which may be dangerous and/or unacceptable to the Buyer, or in violation of any environmental law or regulation including, but not limited to, the presence of any hazardous material (the foregoing collectively, an "Environmental Defect"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is an Environmental Defect, Buyer shall have the right to revoke its acceptance of the Contract and the adoption of the Ordinance, if any, accepting the Contract and approving the purchase of the Property contemplated herein, and to declare the Contract and its Ordinance approving the purchase and execution of the Contract and related closing documents null and void, in which event the Earnest Money Deposit, if any, shall be immediately returned to the Buyer.

8. **TITLE INSURANCE.** Prior to Closing, Buyer, at Buyer's expense, shall obtain a title commitment issued by the Title Company, in the amount of the Purchase Price, with extended coverage over the standard exceptions 1 through 5 (the "Title Commitment"), together with copies of all underlying title documents listed in the Title Commitment (the "Underlying Title Documents"), subject only to those matters described in Exhibit B, attached hereto and made a part hereof (the "Permitted Exceptions"). If the Title Commitment, Underlying Title Documents or the Survey (as hereinafter defined) disclose exceptions to title, which are not acceptable to Buyer (the "Unpermitted Exceptions"), Buyer shall have five (5) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter (the "Buyer's Objection Letter") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have five (5) days from the date of receipt of the Buyer's Objection Letter ("Seller's Cure Period") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, and the Closing shall be extended such additional time, but not beyond December 31, 2013 (the "Extended Title Closing Date") after Buyer's receipt of a proforma title policy (the "Proforma Title Policy") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or, in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract, at which time the Buyer shall be entitled to have the Earnest Money Deposit, if any, returned to Buyer and this Contract shall become null and void without further action of the Parties, or (ii) upon notice to Seller within ten (10) days after Buyer's receipt of Seller's intention not to cure the Unpermitted Exceptions, take title as it then is with the right to deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount which are listed in the Title Commitment. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. The Buyer shall pay the cost for any later date title commitments, and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

9. **SURVEY**. Prior to Closing, Buyer, at Buyer's cost and expense, shall obtain a Plat of Survey that conforms to the Minimum Standards of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement, placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey."

10. **DEED**. Seller shall convey fee simple title to the Property to Buyer, by a recordable Special Warranty Deed (the "Deed"), subject only to the Permitted Exceptions. Seller shall also execute and deliver, at Closing, any and all documents, in addition to the Deed, including an Affidavit of Title, Covenant and Warranty, Title Company documentation including, but not limited to, an ALTA Statement, GAP Undertaking or such other documents reasonably requested either by the Buyer or the Title Company to consummate the transaction contemplated herein and to vest fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the issuance of the Buyer's Title Company owners title insurance policy. Buyer shall be responsible for the recording fee of the Deed.

11. **TEMPORARY CONSTRUCTION EASEMENT**. At closing, the Seller shall also convey a temporary construction easement to the Buyer, relative to a five (5) foot wide strip of property located immediately South of the Property, in the form of the Grant of Temporary Construction Easement attached hereto as Exhibit C, and made part hereof (the "Temporary Easement").

12. **CLOSING DOCUMENTS**. On the Closing Date, the obligations of the Buyer and Seller shall be as follows:

- A. Seller shall deliver or cause to be delivered to the Title Company:
  - i. the original executed and properly notarized Deed;
  - ii. the original executed and property notarized Affidavit of Title, Warranty and Covenant;
  - iii. the original executed and property notarized Non-Foreign Affidavit;
  - iv. counterpart originals of Seller's Closing Statement;
  - v. such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated hereby, including, without limitation, ALTA statements and GAP Undertaking, such other documentation as is reasonably required by the Title Company to issue Buyer its owners title insurance policy in accordance with the Proforma Title Policy and in the amount of the Purchase Price insuring the fee simple title to the Property in the Buyer as of the Closing Date, subject only to the Permitted Exceptions; and

- vi. the original executed and properly notarized Temporary Easement.
- B. Buyer shall deliver or cause to be delivered to the Title Company:
- i. the balance of the Purchase Price, plus or minus prorations;
  - ii. counterpart originals of Seller's Closing Statement; and
  - iii. ALTA Statement and such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated herein.
- C. The Parties shall jointly deposit fully executed State of Illinois Transfer Declarations and County Transfer Declarations.

13. **POSSESSION.** Possession of the Property shall be delivered to Buyer on the Closing Date subject to the Permitted Exceptions, and in the same condition as at the time of the execution of this Contract.

14. **PRORATIONS.** At Closing, the following adjustments and prorations shall be computed as of the Closing Date and the balance of the Purchase Price shall be adjusted to reflect such prorations. All prorations shall be based on a 366-day year, with the Seller having the day prior to the Closing Day.

- A. **Real Estate Taxes.** General real estate taxes for 2013 and subsequent years, if any, special assessments and all other public or governmental charges against the Property which are or may be payable on an annual basis (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Closing Date) shall be adjusted and apportioned as of the Closing Date. If the exact amount of general real estate taxes is not known at Closing, the proration will be based on 105% of the most recent full year tax bill, and shall be conclusive, with no subsequent adjustment.
- B. **Miscellaneous.** All other charges and fees customarily prorated and adjusted in similar transactions shall be prorated as of Closing Date. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable (as, for example, all water, sewer, gas and utility bills), the Parties shall prorate on the best available information. Final readings and final billings for utilities shall be taken as of the date of Closing.

15. **CONVEYANCE TAXES.** The Parties acknowledge that, as Buyer and Seller are governmental entities, this transaction is exempt from any State, County or local real estate transfer tax pursuant to 35 ILCS 200/31-45(b). Seller is obligated to furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.

16. **COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER.** The covenants, representations and warranties contained in this Paragraph shall be deemed remade as of the Closing Date and shall survive the Closing, and shall be deemed to have been relied upon by the Buyer in consummating this transaction, notwithstanding any investigation the Buyer may have made with respect thereto, or any information developed by or made available to the Buyer prior to the Closing and consummation of this transaction. Seller covenants, represents and warrants to the Buyer as to the following matters, each of which is so warranted to be true and correct as of the Effective Date and also on the Closing Date:

- A. **Title Matters.** Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.
- B. **Violations of Zoning and Other Laws.** Seller has received no notice, written or otherwise, from any governmental agency alleging any violations of any statute, ordinance, regulation or code. The Property as conveyed to Buyer shall include all rights of the Seller to the use of any off-site facilities, including, but not limited to, storm water detention facilities, necessary to ensure compliance with all zoning, building, health, fire, water use or similar statutes, laws, regulations and orders and any instrument in the nature of a declaration running with the Property.
- C. **Pending and Threatened Litigation.** To the best knowledge and belief of Seller, there are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Property.
- D. **Eminent Domain, etc.** To the best knowledge and belief of Seller, there is no pending or contemplated eminent domain, condemnation or other governmental taking of the Property or any part thereof.
- E. **Access to Property Utilities.** No fact or condition exists which would result in the termination or impairment of access to the Property from adjoining public or private streets or ways or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.
- F. **Assessments.** To the best knowledge and belief of Seller, there are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed, and there are no special or general assessments pending against or affecting the Property.
- G. **Authority of Signatories; No Breach of Other Agreements; etc.** The execution, delivery of and performance under this Contract by Seller is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Contract do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which

Seller or the Property are bound; and will not and does not, to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court, domestic or foreign, to which Seller or the Property are subject or bound.

- H. Executory Agreements. Seller is not a party to, and the Property is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Property, other than this Contract. Buyer shall not, by reason of entering into or closing under this Contract, become subject to or bound by any agreement, contract, lease, license, invoice, bill, undertaking or understanding which it shall not have previously agreed in writing to accept. Seller warrants and represents that no written leases, licenses or occupancies exist in regard to the Property and, further, that no person, corporation, entity, tenant, licensee or occupant has an option or right of first refusal to purchase, lease or use the Property, or any portion thereof.
- I. Mechanic's Liens. All bills and invoices for labor and material of any kind relating to the Property have been paid in full, and there are no mechanic's liens or other claims outstanding or available to any party in connection with the Property.
- J. Governmental Obligations. To the best knowledge of Seller, there are no unperformed obligations relative to the Property outstanding to any governmental or quasi-governmental body or authority.
- K. Hazardous Materials.
- i. From the Effective Date to and including the Closing Date, Seller agrees: (a) to operate, maintain and manage the Property (including the groundwater thereunder) in the ordinary course of business; (b) that the Property (including the groundwater thereunder) will comply in all respects, and will remain in compliance, with all applicable Federal, State, regional, county and local laws, statutes, rules, regulations or ordinances concerning public health, safety or the environment, and all Environmental Laws (as defined below); and (c) to maintain existing insurance on the Property, including the building and improvements.
- ii. Seller has no knowledge of: (a) the presence of any Hazardous Materials (as defined below) on, under or in the Property (including the groundwater thereunder); (b) any spills, releases, discharges or disposal of Hazardous Materials that have occurred or are presently occurring on or onto the Property (including the groundwater thereunder) which have not been fully remediated according to the standards employed by the Illinois Environmental Protection Agency; (c) any spills or disposal of Hazardous Materials that have occurred or are occurring off the Property (including the groundwater thereunder) as a result of any construction on, or operation and use of, the Property (including the groundwater thereunder) which have not been fully remediated according to the standards employed by the Illinois Environmental Protection Agency; (d) the presence of any equipment containing polychlorinated biphenyl ("PCB"); or (e) the presence of any asbestos in the use of, or on, the Property;

iii. To the best knowledge and belief of Seller, the Property has never been used and will not be used before the Closing Date as a real estate fill, open dump or a waste dump, or for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical material substance or waste. The Property (including the groundwater thereunder) does not contain underground storage tanks or Hazardous Materials, and the Seller has received no notice of nor does the Property (including the groundwater thereunder) violate any Federal, State or Local Environmental Laws. For purposes of this Contract, the phrase "Environmental Laws" shall mean any Federal, State or local law, statute, ordinance, order, decree, rule or regulation (including but not limited to judicial orders, administrative orders, consent agreements and permit conditions) relating to releases, discharges, emissions or disposals to air, water, Property or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde, to the treatment, storage, disposal or management of Hazardous Materials, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.* ("TSCA"); the Occupational, Safety and Health Act, 29 U.S.C. §651, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §3001, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.* ("HMTA"); the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §7401, *et seq.*; the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. §7901, *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 42 U.S.C. §136, *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4321, *et seq.*; the Noise Control Act, 42 U.S.C. §4901, *et seq.*; the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §4821, *et seq.*; the Department of Housing and Urban Development Act, 42 U.S.C. §3531, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.* ("EPCRA"); and the Illinois Environmental Protection Act, and other comparable Federal, State or local laws, and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder, as any or all of the foregoing may from time to time be amended, supplemented or modified. For the purposes of this Contract, the phrase "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws or the release of which is regulated under Environmental Laws. Without limiting the generality of the foregoing, the term "Hazardous Materials" will include: "hazardous substances" as defined in CERCLA; "extremely hazardous substances" as defined in EPCRA; "hazardous waste" as defined in RCRA; "hazardous materials" as defined in HMTA; "chemical substance or mixture" as defined in TSCA; crude oil, petroleum and petroleum products or any fraction thereof (including "petroleum" as that term is defined in 42 U.S.C. §6991(8)); radioactive materials including source, by-product or special nuclear materials; asbestos or asbestos-containing materials; and radon.

iv. Seller has received no notice of and to the best of Seller's knowledge and belief the Property (including the groundwater thereunder) does not violate any law,

regulation or agreement applicable to the Property (including the groundwater thereunder) or its use. With respect to the Property (including the groundwater thereunder), if Seller shall (a) receive notice that any violation of any Federal, State or local Environmental, health or safety law or regulation may have been committed or is about to be committed with respect to the Property (including the groundwater thereunder), (b) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed alleging violations of any Federal, State or local Environmental law or regulation or requiring Seller to take any action in connection with the release of any Hazardous Materials into the environment, (c) receive any notice from a Federal, State or local governmental agency or private party alleging that the Seller may be liable or responsible for costs associated with a response to or cleanup of a release of any Hazardous Materials into the environment or any damages caused thereby, (d) receive any notice that the Seller is subject to Federal, State or local investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, or (e) receive any notice that the Property or assets of Seller are subject to a lien in favor of any governmental entity for any liability under the Federal, State or local Environmental Laws or regulations or damages arising from or costs incurred by such governmental entity in response to a release of a hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, then the Seller shall promptly provide the Buyer with a copy of such notice, and in no event later than fifteen (15) days from Seller's receipt thereof.

v. There are no proceedings pending or, to the best knowledge and belief of Seller, threatened against or affecting the Seller in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, would materially and adversely affect the Property. The Seller is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal, which default would materially and adversely affect the Property.

vi. Seller shall be responsible for any and all costs associated with any required remediation for all environmental contamination upon the Property associated with or which was caused by the Seller's use of the Property or which occurred prior to the Closing Date.

vii. Seller hereby covenants and agrees, at Seller's sole cost and expense, to unconditionally indemnify, defend and hold the Buyer, its president, trustees, officers, servants, employees, agents, successors and assigns (collectively "**Buyer's Affiliates**"), both in their capacities as Buyer's representatives and as individuals, harmless from and against any loss, actions, responsibilities, obligations, liability, damage (whether direct or consequential), expenses, claims (whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future), penalties, fines, injunctions, suits, proceedings, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements and court costs) (collectively, the "**Liabilities**"), arising under or relating to any Environmental Laws, or any other Liabilities which may be incurred by or asserted against any of the Buyer's Affiliates directly or indirectly resulting from the presence of Hazardous Material on or in the



Property (including the groundwater thereunder) and/or any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release or threatened release of Hazardous Materials on or from the Property (including the groundwater thereunder). Seller shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Contract. In the event that the Buyer or any of the Buyer's Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Contract, the Buyer and/or any of the Buyer's Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by Seller pursuant to the indemnification provisions herein. Seller shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Contract and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Contract. In the event that such payment is not made, the Buyer or any Buyer's Affiliate, at their sole discretion, may proceed to file suit against the Seller to compel such payment. The Seller also agrees that it will not settle or compromise any action, suit or proceeding without the Buyer's prior written consent, which consent shall not be unreasonably withheld. Promptly following completion of any actions imposed upon Seller under any Environmental Laws, Seller shall obtain and deliver to the Buyer an environmental report in form and substance acceptable to the Buyer from an environmental consultant acceptable to the Buyer, stating that all required action has been taken and that, upon completion of such action, the Property is, to the knowledge of such professional, then in compliance with all applicable Environmental Laws.

viii. The duration of the indemnification hereunder shall be indefinite with respect to the existence of any environmental pollution or Hazardous Materials existing on the Property (including the groundwater thereunder) at the time of the execution of this Contract and placed there prior to Closing. Notwithstanding the foregoing, this Contract shall not be construed to impose liability on the Seller for Hazardous Materials placed, released or disposed of on the Property (including the groundwater thereunder) through no fault of Seller or its respective agents, employees or contractors after the Closing.

ix. In any pending or threatened litigation, contest, dispute, suit or proceeding (whether instituted by Buyer, Seller or any other party, including any governmental agency charged with enforcement of any Environmental Law) in any way relating to this Contract and the indemnification described herein, or to enforce the indemnification hereunder or, if the Buyer has a reasonable basis to believe that a violation of the Environmental Laws exist in regard to the Property (including the groundwater thereunder), the Buyer shall have the right to retain counsel and environmental sciences consultants of its own choice for advice or other representation without affecting or otherwise impairing the indemnification hereunder and all Liabilities arising from such services shall be payable by Seller within thirty (30) days of demand.

x. Seller's obligations hereunder shall in no way be impaired, reduced or released by reason of the Buyer's omission or delay to exercise any right described herein or in connection with any notice, demand, warning or claim regarding violations of any Environmental Laws governing the Property (including the groundwater thereunder).

xi. Seller's liability hereunder shall not be limited by the other provisions contained in the Contract.

L. Easements. Seller represents that the Property is adjacent to and has full and free access on all perimeter areas to and from public streets, such that no private easements or agreements are necessary to afford access to or from the Property.

M. Section 1445 Withholding. Seller represents that he/she/it/they is/are not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is/are, therefore, exempt from the withholding requirements of said Section. At Closing, Seller shall furnish Buyer with a Non-foreign Affidavit as set forth in said Section 1445.

Seller hereby indemnifies and holds Buyer harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees) and charges which Buyer may incur or to which Buyer may become subject as a direct or indirect consequence of such breach of any of Seller's representations or warranties made hereunder, including all incidental and consequential damages. These representations, warranties and Seller's indemnification shall survive the Closing.

When used in this Paragraph, the expression "to the best knowledge and belief of Seller," or words to that effect, is deemed to mean that Seller, after reasonable examination, investigation and inquiry, is not aware of any thing, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes.

#### 17. DEFAULT AND CONDITIONS PRECEDENT TO CLOSING.

A. It is a condition precedent to Closing that:

- i. fee simple title to the Property is shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and is accepted by Buyer;
- ii. the covenants, representations and warranties of Seller contained in Paragraph 16 hereof and elsewhere in this Contract are true and accurate on the Closing Date or waived by Buyer in writing on the Closing Date; and
- iii. Seller has performed under the Contract and otherwise has performed all of its covenants and obligations and fulfilled all of the conditions required of it under the Contract in order to Close on the Closing Date.

- B. If, before the Closing Date, Buyer becomes aware of a breach of any of Seller's representations and warranties or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to Close on the Closing Date, Buyer may, at its option:
- i. elect to enforce the terms hereof by action for specific performance; or
  - ii. attempt to cure such breach or failure by Seller for a period of up to thirty (30) days following the Closing Date, charging Seller for all costs and expenses incurred in doing so and, following such attempt, to either:
    - a. terminate this Contract and receive a prompt refund of the Earnest Money Deposit, if any; or
    - b. proceed to Close notwithstanding such breach or nonperformance.

In all events, Buyer's rights and remedies under this Contract shall always be non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other, including all rights and remedies available to it at law or in equity.

- C. In the event of a default by Buyer, Seller's sole and exclusive right and remedy shall be a payment by Buyer to Seller of Five Thousand and No/100 Dollars (\$5,000.00) (the "Default Payment") as its sole liquidated damages, it being understood that Seller's actual damages in the event of such default are difficult to ascertain and that the Default Payment is the Parties' best current estimate of such damages. Notwithstanding the foregoing, the Parties agree that no default of or by either Party shall be deemed to have occurred unless and until notice of any failure by the non-defaulting Party has been sent to the defaulting Party and the defaulting Party has been given a period of ten (10) days from receipt of the notice to cure the default.

18. **BINDING EFFECT.** This Contract shall inure to the benefit of and shall be binding upon the heirs, legatees, transferees, assigns, personal representatives, owners, agents, administrators, executors and/or successors in interest of any kind whatsoever of the Parties hereto.

19. **BROKERAGE.** Each Party hereto hereby represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such Party's actions (or claiming through such Party), is entitled to compensation as a consequence of this transaction. Each Party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that Party or that Party's elected officials, officers, employees, agents or affiliates in connection with this Contract. Each Party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorneys' fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder. This provision shall survive the Closing.

20. **NOTICES.** Any and all notices, demands, consents and approvals required under this Contract shall be sent and deemed received: (A) on the third business day after mailed by certified or registered mail, postage prepaid, return receipt requested, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne) for guaranteed next business day delivery, or (C) by facsimile transmission on the day of transmission, with the original notice together with the confirmation of transmission mailed by certified or registered mail, postage prepared, return receipt requested, or (D) by personal delivery, if addressed to the Parties as follows:

To Seller:                    LOMBARD PARK DISTRICT  
227 West Parkside Avenue  
Lombard, Illinois 60148  
Attn: Executive Director  
FAX: (630) 627-1286

With a copy to:            Tressler, LLP  
233 South Wacker Drive  
22<sup>nd</sup> Floor  
Chicago, Illinois 60606  
Attn: Charlene L. Holtz  
FAX: (312) 627-1717

To Buyer:                    VILLAGE OF LOMBARD  
255 East Wilson Avenue  
Lombard, Illinois 60148  
Attn: Village Manager  
FAX: (630) 620-8222

With a copy to:            Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606-2903  
Attn: Thomas P. Bayer/Jason A. Guisinger  
FAX: (312) 984-6444

Either Party hereto may change the name(s) and address(es) of the designee to whom notice shall be sent by giving written notice of such change to the other Party hereto in the same manner, as all other notices are required to be delivered hereunder.

21. **RIGHT OF WAIVER.** Each and every condition of the Closing, other than the Buyer's duties at Closing, is intended for and is for the sole and exclusive benefit of Buyer. Accordingly, Buyer may at any time and from time to time waive each and any condition of the Closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by Buyer shall, unless otherwise herein provided, be in a writing signed by Buyer and delivered to Seller.

**22. MISCELLANEOUS.**

- A. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.
- B. This Contract provides for the purchase and sale of property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Contract and its enforcement, venue shall be in the Circuit Court in the county where the Property is located and the Parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.
- C. The terms, provisions, warranties and covenants of Section 16.K. shall survive the Closing and delivery of the Deed and other instruments of conveyance. The provisions of Section 16.K. of this Contract shall not be merged therein, but shall remain binding upon and for the Parties hereto until fully observed, kept or performed.
- D. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.
- E. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Property Settlement Procedures Act of 1974. In the event that either Party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said Party.
- F. The Parties warrant and represent that the execution, delivery of and performance under this Contract is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.
- G. The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.
- H. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- I. If the Seller is a Trust, this Contract is executed by the undersigned Trustee, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. Said Trustee hereby warrants

that it possesses full power and authority to execute this Contract. It is expressly understood and agreed by and between the Parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless each and every one of them made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding Trustee personally but are made and intended for the purpose of binding only the trust property, and this Contract is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as said Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this Contract or on account of any representations, covenants, undertakings, warranties or agreements of said Trustee in this Contract contained either express or implied, all such personal liability, if any, being expressly waived and released.

In the event the Seller is a Trust as provided above, this Contract shall be signed by the Trustee and also by the person or entity holding the Power of Direction under the Trust. The person or entity signing this Contract is by his/her/their/its signature represents, warrants and covenants with Buyer that he/she/they/it has the authority to enter into this Contract and the obligations set forth herein. All references to the Seller's obligations, warranties and representations shall be interpreted to mean the Beneficiary or Beneficiaries of the Trust.

- J. In the event either Party elects to file any action in order to enforce the terms of this Contract, or for a declaration of rights hereunder, the prevailing Party, as determined by the court in such action, shall be entitled to recover all of its court costs and reasonable attorneys' fees as a result thereof from the losing Party.
- K. Buyer may record this Contract or any memorandum or short form of this Contract against the Property, provided that if the transaction contemplated herein does not occur and the Contract is terminated as provided herein, Buyer shall record a termination of the Contract. The recording fees for either shall be borne by the Buyer.
- L. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- M. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

23. **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the last of the authorized signatories of Buyer and Seller shall sign the Contract, as set forth below.

24. **CONTRACT MODIFICATION.** This Contract and the Exhibits attached hereto and made a part hereof, or required hereby, embody the entire Contract between the Parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.

25. **EXHIBITS.** The following Exhibits are attached hereto and made a part hereof by reference:

- Exhibit A            Legal Description of the Property
- Exhibit B            Permitted Exceptions
- Exhibit C            Grant of Temporary Construction Easement

**IN WITNESS WHEREOF**, the Parties hereto have executed this Contract as of the date below their respective signatures.

**SELLER:**

**LOMBARD PARK DISTRICT,**  
an Illinois Park District

By: \_\_\_\_\_  
Name: Janice Mills  
Title: President

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Seller executed: \_\_\_\_\_

**BUYER:**

**VILLAGE OF LOMBARD,**  
an Illinois municipal corporation

By: \_\_\_\_\_  
Name: Keith Giagnorio  
Title: Village President

**ATTEST:**

By: \_\_\_\_\_  
Name: Sharon Kuderna  
Title: Village Clerk

Date Buyer executed: \_\_\_\_\_

**Exhibit A**

**Legal Description of the Property**

THE NORTH 10 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois.



**Exhibit B**

**Permitted Exceptions**

1. 2013 real estate taxes and subsequent years, not due and payable for the Property, if any.
2. Covenants, conditions, restrictions and easements of record, which do not prevent the Buyer from installing, operating and maintaining a sanitary sewer lift station and all facilities incidental thereto on the Property.

**Exhibit C**

**Grant of Temporary Construction Easement**

(see attached)

**TEMPORARY CONSTRUCTION LICENSE AGREEMENT**

THIS TEMPORARY CONSTRUCTION LICENSE AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by the Lombard Park District, DuPage County, Illinois (hereinafter referred to as the "Grantor") to the Village of Lombard, DuPage County, Illinois (hereinafter referred to as the "Grantee"). Grantor and Grantee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

WHEREAS, Grantor is the owner of the following-described property:

LOT 1 (EXCEPT THE NORTH 10 FEET OF THE EAST 145.74 FEET THEREOF) IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois;

(hereinafter referred to as the "Grantor Property"); and

WHEREAS, the Grantee desires to construct a sanitary lift station on property owned by, or to be acquired by, the Grantee, that is adjacent to the Grantor Property (hereinafter referred to as the "Lift Station Improvements"); and

WHEREAS, the Grantee needs to temporarily enter upon a portion of the Grantor Property in order to properly construct the Lift Station Improvements; and

WHEREAS, Grantor has agreed to grant the Grantee the necessary temporary construction license relative to the construction of the Lift Station Improvements, subject to certain terms and conditions as more fully set forth below;

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, the terms and conditions set forth below and the benefits to be derived from this Agreement, the Parties agree as follows:

1. That the recitals set forth above are incorporated herein and made a part hereof as if set forth fully herein.

2. Grantor hereby grants the Village of Lombard, DuPage County, Illinois, as Grantee, a temporary construction license ("License"), subject to the terms and conditions of this Agreement, for the full and free right, privilege and authority to enter upon that portion of the Grantor Property as legally described below, and as depicted on Exhibit A attached hereto and made part hereof, solely for the purpose of constructing the Lift Station Improvements (hereinafter the "Licensed Activities") on the property owned by, or to be acquired by, the Grantee, that is adjacent to the Grantor Property:

THE SOUTH 5 FEET OF THE NORTH 15 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois;

(hereinafter referred to as the "Temporary License Area").

3. The License shall be used and enjoyed solely by Grantee and its duly authorized officers, agents, contractors or employees to conduct the Licensed Activities in accordance with this Agreement. Grantee shall not assign its rights under this Agreement in whole or in part or grant permission to traverse,

enter upon or otherwise use the Temporary License Area to any other person or entity without the prior written consent of Grantor.

4. Grantor hereby agrees to and with the Grantee that the officers, agents, contractors or employees of the Grantee may, at any and all times designated herein, when necessary and convenient to do so, go in, on, upon, over, through, across and under the Temporary License Area, and do and perform any and all acts necessary or convenient to the carrying into effect the purposes for which this Agreement and the License are made. Grantee shall provide Grantor five (5) days prior written notice, or if five (5) days is not practicable with as much advance notice as possible under the circumstances, in accordance with Paragraph 19 below, of the commencement, anticipated duration, and termination of any Licensed Activities, as applicable, and shall, to the greatest extent practicable, conduct the Licensed Activities so as not to unreasonably interfere with Grantor's use of Grantor's Property or the Temporary License Area.

5. The Grantor reserves the right to make any use of the Temporary License Area, whether on, above or below its surface, for any lawful purpose.

6. The Grantee, and its officers, agents, contractors and employees, shall promptly, and as soon as practicable after completion of the construction of the Lift Station Improvements, restore to its former condition any portion of the Grantor Property which is damaged, disturbed or altered in any manner by the construction of the Lift Station Improvements, at the Grantee's sole cost and expense.

7. All work, labor, services, equipment, tools and materials to be performed, furnished or used directly or indirectly in, or in connection with, construction of the Lift

Station Improvements, and all other matters and things to be performed, furnished or used, or expenses to be paid, under the term of this Agreement are to be at the sole expense of the Grantee, and all such work shall be performed promptly and completed in each instance with diligence and as soon as reasonably practicable after commencement thereof. Grantee shall not cause or suffer or permit to be created any mechanics' or materialmen's liens or claims against the Grantor Property or the Temporary License Area. Grantee shall defend, indemnify and hold harmless Grantor from and against any such claims or liens.

8. No equipment or machinery shall be brought or permitted to come into or onto the Grantor Property except across the Temporary License Area, and subject to such reasonable restrictions as shall be determined by Grantor.

9. No explosives or flammable or hazardous materials of any kind shall be transported across, brought upon, or stored or deposited in the Grantor Property, or used on the Temporary License Area, in such a manner as to cause contamination of the Grantor Property either on, above or below the surface of the ground.

10. The Temporary License Area and other portions of the Grantor Property shall at all times be kept free of accumulations of debris, waste and garbage caused by the Licensed Activities.

11. Grantee shall obtain all necessary permits and approvals and shall otherwise comply with all applicable federal, state and local laws, rules, regulations, and ordinances in the conduct of the Licensed Activities.

12. Grantee shall conduct the Licensed Activities in the Grantor Property and the Temporary License Area entirely at Grantee's own risk. To the fullest extent

permitted by the laws of the State of Illinois, Grantee hereby forever waives, relinquishes and discharges and holds harmless Grantor, its park commissioners, officers, officials, employees, volunteers, and agents from any and all claims of every nature whatsoever, which Grantee may have at any time against Grantor, its park commissioners, officers, officials, employees, volunteers, and agents, including without limitation claims for personal injury or property damage sustained or incurred by Grantee or any person claiming by, through or under Grantee, relating directly or indirectly to this Agreement, the License, or the Licensed Activities.

13. Grantee shall defend, indemnify and hold harmless Grantor, its park commissioners, officers, officials, employees, volunteers and agents (Grantor and such other persons being hereinafter collectively called the "Indemnitees") against and from any and all liabilities, claims, losses, costs, damages and expenses of every nature whatsoever, including without limitation reasonable attorneys' and paralegal fees, suffered, incurred or sustained by any of the Indemnitees, including without limitation liabilities for the death of or injury to any person or the loss, destruction or theft of or damage to any property, relating directly or indirectly to, or arising directly or indirectly from, the exercise by Grantee, or any other person acting on its behalf or with its authority or permission, of the rights and privileges granted Grantee under this Agreement. Grantee shall similarly defend, indemnify and hold harmless the Indemnitees against and from any and all claims, losses, costs, damages and expenses, including without limitation reasonable attorneys' and paralegal fees, suffered, sustained or incurred by any of the Indemnitees as a result of Grantee's breach of any provision of this Agreement or otherwise incurred by any of the

Indemnities in enforcing the terms of this Agreement. Notwithstanding the foregoing, Grantee shall not be required to defend, indemnify, or hold harmless the Indemnities for the Indemnities intentional or negligent acts or omissions.

14. Grantee shall keep in full force and effect at all times during this Agreement general public liability insurance, Workers' Compensation insurance, and such other types of insurance in such amounts and with such companies or self-insurance pools as are reasonably acceptable to the Grantor, but, in any event, no less than the coverages and amounts carried by Grantee for its general activities. The minimum insurance coverage specified in this Paragraph 14 may be provided by self-insurance, participation in a risk management pool, commercial policies of insurance, or a combination thereof. Such insurance shall be evidenced by copies of the policies and/or certificates of insurance at the request of Grantor, and said insurance shall not be modified, terminated, canceled or not renewed without at least thirty (30) days advanced written notice to the Grantor.

In addition to, and in furtherance and not in limitation of, Grantee's insurance obligations set forth above, and at no cost to Grantor, Grantee shall require any contractor(s) performing any of the work contemplated by this Agreement to obtain and keep in full force and effect for so long as any claim relating to the Licensed Activities legally may be asserted, comprehensive general liability and property damage insurance written to include the coverages and for not less than the minimum limits, or greater if required by law, as provided on Exhibit B attached hereto and incorporated herein by reference. Grantee shall similarly require any contractor(s) performing any of the work contemplated by this Agreement to defend, indemnify and hold harmless



Grantor in accordance with and as more fully set forth in Subsection F. of Exhibit B attached hereto and incorporated herein by reference.

15. The License granted Grantee hereunder shall be in full force and effect through and including December 31, 2015, or until the completion of the Lift Station Improvements, whichever occurs first, unless sooner terminated by Grantor in accordance with Paragraph 16 below.

16. The License granted Grantee hereunder may be terminated prior to its expiration date:

- a. immediately upon written notice to Grantee in the event Grantee or its contractor(s) shall fail to procure or maintain the insurance required under Paragraph 15 above, or shall fail to provide evidence of such coverage as required above; or
- b. immediately upon Grantee's failure to remedy or obtain remedy by its contractor(s) of any breach of any term or condition of this Agreement (other than Paragraph 15 regarding insurance) within forty-eight (48) hours after written notice of such breach is delivered to Grantee.

17. This Agreement and the License granted hereunder does not convey to, or create in favor of, Grantee any legal or equitable title to or interest, in whole or in part, in or to the Grantor Property, or any portion thereof, it being acknowledged that this Agreement and the License granted hereunder provide for a temporary license and not a lease, and merely grant temporary and limited permission to Grantee to use the

Temporary License Area solely for the Licensed Activities on and subject to the terms and conditions of this Agreement.

18. No waiver of any rights which Grantor has in the event of any default or breach by Grantee under this Agreement shall be implied from failure by Grantor to take any action on account of such breach or default, and no express waiver by Grantor shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent therein stated.

19. Any and all notices, demands, consents and approvals required under this Agreement shall be sent and deemed received: (A) on the third business day after being mailed by certified or registered mail, postage prepaid, return receipt requested, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne) for guaranteed next business day delivery, or (C) by facsimile transmission on the day of transmission, with the sender retaining a copy of the confirmation of transmission, or (D) by personal delivery, if addressed to the Parties as follows:

To Grantor:            LOMBARD PARK DISTRICT  
                              227 West Parkside Avenue  
                              Lombard, Illinois 60148  
                              Attn: Executive Director  
                              FAX: (630) 627-1286

With a copy to:        Tressler, LLP  
                              233 South Wacker Drive  
                              22nd Floor  
                              Chicago, Illinois 60606  
                              Attn: Andrew S. Paine  
                              FAX: (312) 627-1717

To Grantee:            VILLAGE OF LOMBARD  
                              255 East Wilson Avenue

Lombard, Illinois 60148  
Attn: Village Manager  
FAX: (630) 620-8222

With a copy to: Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606-2903  
Attn: Thomas P. Bayer/Jason A. Guisinger  
FAX: (312) 984-6444

20. This Agreement contains the entire agreement between the Parties with respect to the use of the Temporary License Area and the Grantor Property by Grantee in connection with the Licensed Activities and cannot be modified except by a writing, dated subsequent to the date hereof, and signed by both Parties.

21. Nothing contained in this Agreement is intended to be, nor shall operate as, a waiver by Grantor or Grantee of the rights, defenses, and immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act.

IN WITNESS WHEREOF, the Grantor has caused its name to be signed to these presents the day and year first above written.

Grantor: LOMBARD PARK DISTRICT

By: \_\_\_\_\_  
Name: Gregory Ludwig  
Title: President

ATTEST: \_\_\_\_\_  
Name: Paul Friedrichs  
Title: Secretary

Agreed to and accepted by the Village of Lombard, DuPage County, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2013.

By: \_\_\_\_\_  
Keith Giagnorio, Village President

ATTEST: \_\_\_\_\_  
Sharon Kuderna, Village Clerk

**ACKNOWLEDGMENT**

STATE OF ILLINOIS    )  
                                  ) SS  
COUNTY OF DUPAGE    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith Giagnorio and Sharon Kuderna, personally known to me to be the Village President and the Village Clerk, respectively, of the Village of Lombard (the "Village"), and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of the Village to be affixed thereto, pursuant to authority given by the Board of Trustees of said Village, as their free and voluntary act, and as the free and voluntary act and deed of the Village, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public



**EXHIBIT A**

**Drawing of Temporary License Area**

(attached)



## EXHIBIT B

### CONSTRUCTION ACCESS LICENSE INSURANCE REQUIREMENTS FOR CONTRACTORS

Every contractor performing any of the work contemplated by this Agreement, whether in whole or in part ("Contractor"), shall procure and maintain for at least the duration of this Agreement, insurance of the types and in the amounts listed below.

#### **A. Commercial General and Umbrella Liability Insurance**

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Lombard Park District ("District") and its park commissioners, officers, officials, employees, volunteers and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to District. Any insurance or self-insurance maintained by District shall be excess of the Contractor's insurance and shall not contribute with it.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

#### **B. Continuing Completed Operations Liability Insurance**

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum,



cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

**C. Business Auto and Umbrella Liability Insurance**

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**D. Workers Compensation Insurance**

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If District and its park commissioners, officers, officials, employees, volunteers and agents has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against District and its park commissioners, officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

**E. General Insurance Provisions**

**1. Evidence of Insurance**

Prior to beginning work, Contractor shall furnish District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days written notice to District prior to the cancellation or material change of any insurance referred to therein. Written notice to District shall be by certified mail, return receipt requested.

Failure of District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

District shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of this Agreement at District's option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to District whenever requested.

Contractor shall provide certified copies of all insurance policies required above within 10 days of District's written request for said copies.

## **2. Acceptability of Insurers**

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

## **3. Cross-Liability Coverage**

If Contractor's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

## **4. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to the District. At the option of the District, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the District, its park commissioners, officers, officials, employees, volunteers and agents or required to procure a

bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

## **5. Subcontractors**

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

## **F. Indemnification**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District and its park commissioners, officers, officials, employees, volunteers and agents (hereinafter collectively the "Indemnitees") from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Indemnitees against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Agreement. Notwithstanding the foregoing, Contractor shall not be required to defend, indemnify, or hold harmless the Indemnities for the Indemnities intentional or negligent acts or omissions.